

June 18, 2018

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The Honorable Makan Delrahim  
Assistant Attorney General, Antitrust Division  
United States Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

Dear Mr. Delrahim:

On behalf of the 1.3 million members of the National Association of REALTORS® (NAR), their affiliates, and property owners, I want to take this opportunity to respond to your comments at the recent Department of Justice Roundtable on Competition and Deregulation. At the event, you cited NAR as an example of a group that used regulation to create competition barriers by preventing the financial services industry from entering the real estate brokerage business. NAR wishes to clarify the characterization of these events.

NAR has a longstanding position in support for a bright line between financial activities and commerce, specifically banks engaging in real estate brokerage or management. Banks engaging in real estate brokerage would create an uneven playing field and inherent conflicts of interest, all the while benefitting from federally chartered advantages that are not afforded to their real estate brokerage competitors. These benefits include access to funds at discounted rates, deposit insurance, and federal agencies' ability to restore banks to solvency if they get into financial trouble.

The 2009 Omnibus Budget bill permanently prevents real estate brokerage and property management from being defined as financial in nature by the Federal Reserve and U.S. Treasury under *Gramm-Leach-Bliley Act* (GLBA).

Under GLBA, national bank holding companies were only allowed to earn profits from certain commercial activities such as insurance. There were several proposals to allow banks to earn a percentage of their profits from commercial activities; Representative Leach (R-IA) proposed 15 percent while Senator Gramm (R-TX) proposed 25 percent. While both the Leach and Gramm proposals failed, GLBA did include a rulemaking process in which the national bank holding companies could petition the U.S. Treasury and Federal Reserve to have activities defined as financial in nature. This process specifically excluded real estate development, real estate investment, and insurance underwriting.

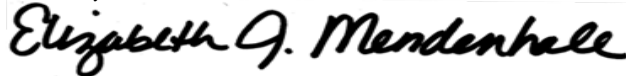
In 2001, Citigroup and the Clearinghouse Association applied to the U.S. Treasury and Federal Reserve to have real estate brokerage and property management defined as financial in nature. In 2001, Reps. Ken Calvert (R-CA) and Paul Kanjorski (D-PA) introduced HR 3424, the *Community Choice in Real Estate Act* and Senators Wayne Allard (R-CO) and Hillary Clinton (D-NY) introduced companion legislation, S. 1839, in the Senate that would prevent real estate brokerage and management services from being defined as financial in nature. The legislation was reintroduced over several Congresses and garnered as many as 276 cosponsors in the House and 27 cosponsors in the Senate. Subsequently, Rep. Anne Northrup (R-KY) passed an Appropriations rider limiting funds to be spent on the rule. That rider was passed every year as a one-year limitation until Fiscal Year 2009 when permanent language was included in the Omnibus bill that passed the House 245-178, passed the Senate on a voice vote, and was ultimately signed by President Obama on March 11, 2009.



Through the years, Congress made a clear legislative statement that banks should not be engaging in commercial activities such as real estate brokerage and management services because it would create anti-competitive and anti-consumer concentrations of power within the financial services sector, an uneven playing field among commercial competitors, and conflicts of interest among commercial competitors. The real estate brokerage industry is already characterized by fierce competition, market efficiencies, and ease of entry. Allowing banks with inherent competitive advantages to own real estate brokerage companies would stifle competition, limit consumer choices and predictably raise consumer costs. among commercial competitors.

While NAR advocated for a permanent ban on banks engaging in real estate through the legislative process, it was the U.S. Congress that repeatedly reviewed the issue of banks in real estate and chose to permanently ban banks from engaging in real estate brokerage. We thank you for your review of these events and look forward to working with the Department of Justice to ensure that consumers continue to benefit from healthy competition in both the real estate and financial services markets.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth G. Mendenhall". The signature is written in a cursive style and is positioned above a thin horizontal line.

Elizabeth Mendenhall

2018 President, National Association of REALTORS®

cc: Rene Augustine

Senior Counsel to the Assistant Attorney General, Antitrust Division